IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 3151 of 2004

In

CRIMINAL MISC.APPLICATION No. 3151 of 2004

For Approval and Signature:

THE HON'BLE MR.JUSTICE C.K.BUCH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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UMEDSINH P CHAMPAWAT - Petitioner(s)

Versus

STATE OF GUJARAT - Respondent(s)

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Appearance :

MR KB ANANDJIWALA for Petitioner No(s).: 1.

DR SONIA HURRA for Petitioner No(s).: 1.

Mr.A.Y.Kogje, Addl. PUBLIC PROSECUTOR for Respondent No(s).: 1.

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CORAM :THE HON'BLE MR.JUSTICE C.K.BUCH

Date : 29/06/2005

CAV JUDGMENT

1. By means of filing this petition under section 482 of CrPC, the petitioner accused has prayed for quashing the FIR filed and chargesheet submitted in connection with the offences, registered on 16.02.2003 by DCB Police Station being II.CR No.3003/2003 punishable under sections 3, 4, 5, 7 and 9 of the Immoral Traffic (Prevention) Act, 1956 known as The Suppression of Immoral Traffic in Women &Girls Act, 1956 (hereinafter referred to as the Act). It is submitted that the petitioner is totally innocent and is not involved in any of the offences alleged against him in the FIR or the chargesheet directly or indirectly and he is being wrongly prosecuted for the said offences which can be termed as the "offence against society." The petitioner is prosecuted and chargesheeted as the owner of one hotel in the area near Airport of City of Ahmedabad known as Hotel Taj Residency Umed.

2. Ld. counsel Mr. Anandjiwala appearing for the petitioner has taken this Court through the averments made in the petition and the cause for which the petitioner has been named as an accused in the chargesheet filed by the police. Of course, the FIR as well as the chargesheet have been assailed on various grounds mentioned in the memo of the petition, but ld. Counsel Mr. Anandjiwala has concentrated his arguments substantially on two main grounds, viz;

(i) The uncontroverted allegations made in the FIR and the evidence which has been collected by the Investigating Agency so far in support of the same which consist of statements of co-accused and the so-called victims of immoral traffic(prostitutes) do not disclose the commission of any offence and make-out a case against the accused; in light of the scheme of sections shown in the FIR and the purpose of the Act.
(ii) The present criminal proceedings initiated against the petitioner is manifestly tainted with malafide and is maliciously instituted with an ulterior motive for wreaking vengeance on the petitioner in view of the political motivation as can be seen from the facts on record.

3. To appreciate the say and submissions of ld. counsel Mr. Anandjiwala for the petitioner, it would be beneficial to narrate in brief the case of the prosecution.

(i) On 06.02.2003, a specific information was received by the Jt. Police Commissioner, Crime Branch, Ahmedabad that an illegal and immoral activities are being done by the Agents etc. providing young girls and women and they are being used as sex workers. These activities are nothing but prostitution and, therefore, with a view to contemplate some legal action against such persons/ agents, an offence came to be registered as II.CR No.3003/2003 at DCB Police Station.

(ii) Investigation of said FIR was being done by one Police Inspector Shri Tarun Barot and when investigation was in progress, on 15.02.2003, Dy. SP, Crime Branch Shri Vanzara received further secret information that in certain hotels, this immoral trafficking business of prostitution of girls and ladies is being done by some procurers/agents which can be termed as agent or mediator. In relation to this information and to do further procedure under the rules, the services of one lady panch and two male panchas were sought and the raid was carried out by finalising a deal with the procurers mainly with one Shri Nirav Modi. This Nirav Modi- one of the co-accused had agreed to send a girl in Hotel Samir and subsequently a successful raid was carried out at Hotel Samir and during raid, raiding party found one girl from room No.305 along with bogus customer planted by the raiding party. The girl found from room No.305 of Hotel Samir was, according to the prosecution, one Shehnaz Munni, w/o Md. Yunus Shaikh. Immediately thereafter, one another raid was carried out at Hotel Avtar Palace located near Raipur Gate, Opp: Mahipatram Ashram. This raid was carried out on the information divulged by Shenaz @ Munni. Certain recoveries were made from Hotel Avtar and from the persons on duty at Hotel Avtar Palace and the things were seized by the officer heading the raiding party under a panchanama. According to the prosecution, this raid was also a successful raid. The case of the prosecution is that accused Nirav Modi disclosed certain facts that he himself and his closeacquaintance Shri Amin @ Devang and Aji Christian are in hand in-gloves and they used to book rooms in Hotel Avtar Palace, Hotel Samir and Hotel Taj Residency Umed and with the help of the management of these hotels, they are successfully or say regularly supplying the girls to the customers and visitors of the aforesaid hotels for prostitution. Thus, the FIR is also against the owners or persons in management of all the three hotels. The

present petitioner as per say of prosecution being theowner of the Hotel Taj Residency Umed, is made accused and now has been chargesheeted.

4. It is submitted by ld. counsel Mr. Anandjiwala for the petitioner and it is pertinent to note that it is not the case of the prosecution either in the FIR or in the chargesheet that any raid was carried out by sending a bogus customer at Hotel Taj Residency Umed and the petitioner has been arraigned as an accused only because of the reason that statement of Shri Nirav Modi involves him in the activity. This Nirav Modi is undisputedly a co-accused. So, according to ld. counsel Mr. Anandjiwala, there is no legal evidence against the present petitioner and the statement of a co-accused that too before police can not be read as a piece of evidence for any purpose. The police ought not to have even chargesheeted the present petitioner. The statement of Nirav Modi is a statement made in presence of panchas, such statement is made before panchas, it would not become a legal piece of evidence in the eyes of law as it was in presence of police. In the FIR, the case of the prosecution is that Nirav Modi, by joining hands with one Aji Christian, a co-accused, they used to book rooms in these hotels with the help of the management of the hotels. Though a specific information was available to the investigating agency or raiding party, no positive evidence has been collected which can be said to be a proof, prima facie, by sending bogus customer to Hotel Taj Umed in the manner in which it was done in the case of Hotel Samir. According to ld. counsel Mr. Anandjiwala, the prosecution against the present petitioner has political background and there is an element of malafide. It is argued by ld. counsel Mr.Anandjiwala that with an ulterior motive, the present prosecution has been instituted and it is possible to infer that the same is malicious.

5. According to ld. counsel Mr. Anandjiwala, the petitioner is a person of social standing and repute in Rajasthan and Gujarat. The petitioner has been in public life since long and has been involved in multifarious social and political activities since his youth. He has carried out number of social projects in Rajasthan for the upliftment of down-trodden people and various activities were being carried out for the benefit of the poor needy people. Due to ideological reason, the petitioner has joined Congress (I) Party

and had become the All India Joint Secretary of Youth Congress (I). At present the petitioner is a Member of All India Congress (I) Committee (AICC) and also the Secretary of Rajasthan Pradesh Congress Committee. The petitioner had also fought election against Bhairosinh Shekhawat who is at present the Vice President of India. The petitioner is hailing from Rajput Community of Jodhpur District. In his personal life the petitioner is at present in control and management of Royale Manore Hotel and Industries Ltd. which is a Public Limited Company which owns Star Hotels. One such Four Star Hotel namely The Taj Residency Umed, Ahmedabad is at present being managed by the Indian Hotels Ltd. (Taj Group of Hotels).

6. As per the say of ld. counsel Mr. Anandjiwala, the petitioner is enjoying the position in Senior Cadre of the Management in various hotels and resorts and is also the Managing Director of Marwar Hotels Ltd., which is a Public Limited Company which is at present engaged in setting four Five Star Hotels at the famous tourists places like Jaipur, Udaipur, Jesalmer and Jodhpur. It is alleged that the name of the petitioner as well as the name of the hotel was dragged into controversy due to political rivalry and the petitioner refuted the charges levelled against him by the Government of Gujarat that the Ministers of Punjab had enjoyed sex in his hotel. It is submitted that he has been involved in the offence to achieve some political gain. According to the petitioner, he could have been said to be the owner of the said hotel viz. Taj Residency Umed upto 18.04.2000, but thereafter, he has entered into a Hotel Operating Agreement and the said agreement was entered into between the Indian Hotels Ltd. (Taj Group of Hotels) on one hand and the Royale Manore Hotels &Industries Ltd. and the petitioner on the other hand. By this agreement, overall control and management of the said hotel was handed over to Indian Hotels Ltd. (Taj Group of Hotels) and the name of the Hotel was also changed to Hotel Taj Residency Umed. According to ld. counsel Mr. Anandjiwala, after 01.05.2000, all aspects concerning the management of the said Hotel were and are being looked after by Taj Group of Hotels and the police personnels including the officers of investigating agency, though are aware of these facts, the petitioner has been implicated in a serious charge. The petitioner has also produced the copy of the said agreement in support of the case and is available on record at Annex.C.

7. It is alleged by the petitioner that after taking over the charge of management, Indian Hotels Ltd.entered into various sub-contracts with different parties and by that way, one agreement was entered into between Indian Hotels Ltd. on one hand and Shri Abishek B.Morak -proprietor of M/s Shrungar Beauty Parlour having the beauty clinic at F/16 Fairdeal House, Swastik Cross Roads, CG Road, Ahmedabad. By the said agreement, a licence was given in favour of Shrungar Beauty Parlour to start Beauty Parlour in the said hotel premises. Another agreement was entered into between Taj Residency Umed and Shri Anil Sharma who is the owner of "Impact" engaged in the business of Taxi Services for car on hire. All these documents clearly show that the management of the hotel was with Indian Hotels Ltd. and the implication of the present petitioner in the offence is totally malafide because of his non-cooperation in involving the big persons from Punjab like Ministers.

8. It is argued by ld. counsel Mr. Anandjiwala that even for the sake of argument it is accepted that the allegations made by the prosecution in the FIR remain uncontroverted that the petitioner has direct control over the management of the hotel, even then there is no legal evidence on record i.e. in the papers placed by the investigating agency with the report, on the basis of which it can be said that the provisions of the Act would be attracted qua the present petitioner or qua the management of the hotel Taj Residency Umed. The true object of the Act is to prevent commercialisation of the vice and trafficking among women and girls. In 1950, the Government of India ratified an International Convention for the suppression of traffic in persons and of the exploitation of the prostitution of others. Under Article 23 of the Constitution of India, traffic in humanbeings is prohibited. The Suppression of Immoral Traffic in Women and Girls Act of 1956 came to be enacted in pursuance of an International Convention signed at New York. However, in the present case, the case of the prosecution is that the petitioner is involved in flash trade and is alleged to have committed offences under sections 3,4, 5, 7 &9 of the said Act.

9. Sec.3 of the said Act provides punishment for keeping the brothel or allowing the premises to be used as brothel and on bare

words of one of the co-accused, the petitioner could not have been prosecuted under this Act because as per the scheme of Sec.3, it is obligatory on the part of the prosecution to show from evidence that the petitioner had kept brothel and he was responsible or liable for allowing a particular premises to be used as a brothel. When he was not there in the effective management of the hotel on the relevant date, nochargesheet under sec.3 of the Act could have been filed against the present petitioner.

10. So far as as the offence punishable under section 4 of the Act is concerned, it provides punishment for living on the earning of prostitution. Section says that any person over the age of 18 years who knowingly lives, wholly or in part, on the earnings of the prostitution (of any other person) is said to have committed an offence under the Act. In view of the details given by the petitioner as to his business activities and involvement in hotel and resort business and other businesses like mining etc., it would not be proper for this Court to accept the say of ld. APP that there is prima facie evidence to show that the petitioner has committed offence punishable under sec.4 of the Act.

11. The petitioner has also been charged with the offence punishable under sec.5 of the Act which says that any person who-
(a) procures or attempts to procure a person, whether with or without his consent for the purpose of prostitution, or
(b) induces a person to go from any place with the intent that he/she may for the purpose of prostitution becomes the inmate of, or frequent, or a brothel, or
(c) takes or attempts to take a person or causes a person to be taken, from one place to another with a view to his/her carrying-on, or being brought upto carry-on prostitution, or
(d) causes or induces a person to carry on prostitution;
shall be punishable under the Act.
It has been submitted that the evidence which has been collected by the investigating agency in the form of Statements of the co-accused and the so-called prostitutes, atleast rules-out applicability of clause (b), (c) and (d) in toto. It is not even the case of the prosecution that the accused is said to have committed an offence under clause (b), (c) or (d). What is alleged is that the petitioner has procured or has attempted to procure a person for the purpose of prostitution. The question of Law which

falls for consideration of the Hon'ble Court is as to whether a customer or a person who enjoys sex with a prostitution can be said to have procured a person for the purpose of prostitution.
(ii) The word "procures" used in this section connotes that somebody other than the petitioner should procure the woman for him. Section 5(i)(a) of the Act can be invoked only against the procurer like the agent or a pimp and not against persons like the petitioner because there is no allegation or the case that the petitioner was a person involved in procuring a woman. On the contrary, the case of the prosecution is that somebody else was procuring a woman or a girl and certain hotels were being used by them doing booking of rooms.
12. Ld. counsel Mr. Anandjiwala has drawn attention of this Court on the observations made by this Court in para-26 of the decision in the case of **State of Gujarat v/s Bai Radha, w/o Natvarlal Ramshankar &Another (9 GLR 261)**. It would be beneficial to quote the relevant para-26 which is as under:-

"26. Sec.5(1)(a) provides that any person who procures or attempts to procure a woman or girl, whether with or without her consent, for the purpose of prostitution, that person shall be punished as provided therein. In this respect also Mr. Nanavati's contention was that accused No.3 can be said to have procured a woman such as Bai Kanta for the purposes of prostitution to Kishan and that, therefore, he can be held liable for the offence under sec. 5(1)(a) of the Act. The word "procure" is not defined under the Act,but we were referred to its dictionary meaning which says "To bring about by care or pains; also (more vaguely) to bring about, cause, effect, produce; to obtain by care or effort; to acquire; to obtain (women) for the gratification of lust; to prevail upon, induce, persuade (a person) to do something." Giving the normal meaning to the use of the word "procure" in clause (a) of sub-sec.(1) of sec.5, what is required is only that he must have obtained a woman or a girl for the purpose of prostitution for a particular individual. "

Mr. Anandjiwala has placed emphasis on words "obtain a woman or a girl for the purpose of prostitution for a particular individual" and it is argued that from these observations made, it is sufficiently clear that section 5(i)(a) of the Act would not be attracted at all in the present case so far as the present

petitioner is concerned.

13. The petitioner is also charged with the offence under Sec.7 of the Act. Sec.7 of the Act makes the prostitution in or in the vicinity of public places an offence. Firstly, the prostitution in itself is not an offence under the Act, save in the manner given in Sec.7 and 8. Firstly, the petitioner by any stretch of imagination can not be charged with this offence under Sec.7 of the Act because to attract the said section, the prosecution must prima facie show that the petitioner is carrying on prostitution. It is only when the first ingredient is satisfied then the question would be as to whether the prostitution is being carried out in or in the vicinity of public place. When sec.3 of the Act is not applicable, when Sec.4 of the Act is not applicable to the present petitioner, there is no question of charging the accused with the offence punishable under Sec.7 of the Act. When no formal raid was carried out at Hotel Taj Residency Umed and no part of the premises of the said hotel was found in actual use of such illegal activities, it would not be legal to continue the prosecution against the petitioner for using the public place for the activities of prostitution.

14. Section 9 of the said Act, on the face of it, is not applicable in the facts and circumstances of the present case. For attracting Sec.9 of the Act, it has to be shown prima facie that the petitioner having position or authority over any person i.e. a woman or girl causes or aids or abets the seduction for prostitution of that woman or girl. The question again, at the cost of repetition, is the petitioner's position or authority over any such woman or girl.There is not a thread of any evidence even to remotely suggest that the petitioner taking undue advantage of his position or authority over any woman or girl, caused or aided or abetted the seduction for prostitution of that woman or girl.

15. Undisputedly, powers of this Court under section 482 of CrPC are very wide. It is true that the same should be used sparingly and in rare case, where it is apparent from record that the prosecution has no case. The discretion for quashing the complaint or chargesheet must be carefully used and the High Court must see that its decision in exercise of its power is based on sound principles. As per the settled legal position, as observed by the

Apex Court, if FIR fails to disclose the commission of offence without anything being added or subtracted from recitals therein then the High Court would be absolutely justified in quashing the FIR or the chargesheet. In the present case, there is no legal evidence against the petitioner and, therefore, quashing of the FIR and the chargesheet would be justified. The Court is also supposed to consider the nature of allegations made more particularly in the case which has been put forward against the petitioner accused. The Court is in agreement with the say of ld. counsel Mr. Anandjiwala that the ratio of the decision in the case of Bai Radha (supra) would help the petitioner and even on facts, it emerges that the prosecution instituted against the present petitioner is not even healthy one. Totally illegal implication in the offence is equal to a false implication and for such an act, the prosecuting officer/agency can be held liable for malicious prosecution. But this exercise has to be made by the person falsely implicated before the competent forum in accordance with law. The petitioner is entitled to do it.

16. For the reasons aforesaid, present Cri. Misc. Application is allowed. The complaint being II.CR No.3003/2003 registered at DCB Police Station, Ahmedabad on 16.02.2003 for the offences punishable under sections 3, 4, 5, 7 and 9 of the Immoral Traffic (Prevention) Act,1956 (also known as The Suppression of Immoral Traffic in Women and Girls Act, 1956) qua the present petitioner is hereby quashed and set aside. Consequently, the chargesheet and all other proceedings based on the said complaint/chargesheet qua the present petitioner also stand terminated and quashed.
Rule is made absolute.

[C.K. BUCH, J]

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